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 2 _____ LODGED _____ RECEIVED UNITED STATES DISTRICT COURT
 3 MAR 05 2003 MR WESTERN DISTRICT OF WASHINGTON

4 AT SEATTLE
 CLERK U.S. DISTRICT COURT
 WESTERN DISTRICT OF WASHINGTON DEPUTY

AT SEATTLE

5 RAYMOND LEICH, a resident of)
 6 Florida, derivatively on)
 7 behalf of EVERGREEN STATE)
 RESTAURANT CORP ,)
 Plaintiff,)

8 vs)
 9 CRAIG and JANE DOE EDWARDS,)
 Washington residents, and)
 their marital community,)
 Defendants,)

10 and)
 11 EVERGREEN STATE RESTAURANT)
 CORP., a Washington)
 corporation,)
 12 Nominal Defendant)

13 CRAIG R EDWARDS, on his own)
 14 behalf and on behalf of)
 EVERGREEN STATE RESTAURANT)
 CORP ,)
 15 Counterclaimant and)
 Third-Party Plaintiff,)

16 vs)
 17 RAYMOND LEICH, an individual,)
 CLIFFORD L. JONES and LINDA)
 18 JONES, and their marital)
 community, and EVERGREEN)
 19 RESTAURANT VENTURES, INC., a)
 Washington corporation,)
 Counterclaim Defendants,)
 20 Third-Party Defendants)

21 HEARING ON MOTION FOR TEMPORARY RESTRAINING ORDER
 22 on February 26, 2003, before the Honorable Barbara Jacobs
 Rothstein, United States District Judge, at the United States
 Courthouse, Seattle, Washington
Appearances of Counsel

23 On Behalf of Plaintiff

24 On Behalf of Defendant

25 Sue Palmerton, Official Court Reporter
 (206) 553-1899

Case C03-108R

ORIGINAL

CV 03 00108 #00000033

DAVID HOFF ERIC BLANK
 Attorneys at Law
 SPENCER HALL RONALD BEARD
 Attorneys at Law

33

1 Seattle, Washington, Wednesday, February 26, 2003, 3 07 p m

2 THE CLERK Calling case number C03-0108, Raymond Leich
3 versus Craig and Jane Doe Edwards Counsel, please make your
4 appearance

5 MR HOFF Yes. Your Honor, my name is David Hoff
6 I'm the attorney for the plaintiff And my co-counsel is Mr
7 Eric Blank

8 MR BLANK Good afternoon, Your Honor

9 THE COURT Good afternoon

10 MR HALL. Your Honor, I'm Spencer Hall I represent
11 Craig Edwards and his marital community. Seated next to me is
12 Mr Edwards and on his right is Ron Beard He is appearing as
13 co-counsel with us in this case

14 MR BEARD Good afternoon, Your Honor

15 THE COURT Mr. Hoff, you are going to lead off?

16 MR HOFF. Yes, Your Honor

17 THE COURT. And I was figuring about 20 minutes a side.
18 Would that be enough?

19 MR HOFF. If that Yes, I think it will be enough

20 THE COURT You want to save some time for rebuttal?

21 MR HOFF Yes, I would, Your Honor.

22 THE COURT All right

23 MR HOFF Your Honor, we are before you today simply
24 to ask to restrain a shareholders meeting to take place until
25 such time as a preliminary hearing can be held on our

1 injunction To just give you the briefest background in this
2 case

3 Evergreen is the corporation which has joint ventures with
4 limited partners that own 27 restaurants, Outback Steak
5 restaurants Each one of them is a separate franchise that is
6 issued

7 Evergreen is a corporation that was managed by Mr Edwards
8 until approximately three years ago when Mr Edwards had some
9 difficulties, some medical difficulties which affected his
10 health, and there were some drinking problems that caused him to
11 go to alcohol treatment centers And Outback Steakhouses said
12 that you have to get him out of management of this company or
13 else we're going to pull the franchises

14 And they asked that Mr Jones, who was a passive investor in
15 these franchises and in Evergreen, they asked that Mr Jones
16 come in and he be the manager of the operation And that if he
17 would do so, they would not -- they would not interfere with the
18 franchises and they would let the franchises exist

19 Mr Jones did so and formed a management company called
20 Evergreen Ventures, Inc which is referred to as ERVI, E-R-V-I,
21 in the papers in front of you And ERVI undertook the
22 managements of these 25 Outback Steakhouses

23 This was pursuant to an agreement between Mr Edwards and
24 Mr Jones whereby ERVI would manage these restaurants and these
25 franchises and the joint venture partners, the limited partners

1 in this venture And that they would do so and they would take
2 a management fee which amounted to, I believe it was 200 --
3 around \$250,000 a year, which was the same fee that Mr Edwards
4 had been taking previously as manager

5 The way that ERVI managed the business was to not distribute
6 the money all out, but to keep the money back in the corporation
7 for the benefit of the restaurants and the partners

8 What happened is that disputes arose between the parties
9 This agreement has been in operation for about two years with
10 ERVI running Evergreen -- or not running Evergreen, but running
11 the restaurants.

12 There was a dispute that Mr Edwards originally raised that
13 he thought that there were some conflicts of interest on behalf
14 of ERVI For that reason, an independent public accounting firm
15 was hired And that independent public accounting firm which
16 was hired on January -- pardon me, which was hired last year was
17 Hagen Streiff Newton and Oshiro

18 They came back and gave a preliminary report where they said
19 we found nothing wrong, we don't find any conflicts of interest,
20 but there are some very strange looking financial transactions
21 in this company, and we feel that you should have us do some
22 further looking

23 All of the parties, including Mr Edwards, agreed that
24 Oshiro, et al , should continue to look at the books of the
25 company They did a sampling looking at four of the 27

1 restaurants And in that sampling, they discovered that there
2 were fraudulent activities performed while Mr Edwards was in
3 charge of the country -- of the company, including the
4 fraudulent requests for reimbursement and expenses

5 And one of the examples was a \$25,000 airline ticket to
6 Australia which was paid by Outback, but he then took a copy of
7 the ticket and also submitted it for reimbursement to the
8 company And just matters where he would supply copies of
9 American Express charges that included all of the copies, the
10 original copy as well as the copies, that obviously it was not
11 even submitted to the restaurant

12 What they said in their report of the four restaurants they
13 looked at -- remember we're talking about four out of 27 -- they
14 have discovered that there was over \$200,000 of these
15 misallocated funds And they said and I'm going to quote, they
16 said that, "The duplication of items, especially airfares where
17 ticket receipt, travel agent statement and credit card statement
18 are all submitted for reimbursement of the same go beyond simple
19 mistakes or careless errors These repeated and blatant
20 duplications indicate that the intent was to be reimbursed for
21 expenses not incurred "

22 This in addition to other -- list of other things that are
23 contained in our pleadings and contained in the demand letter
24 that was made to the corporation indicated that there were
25 fraudulent activities that had been performed by Mr Edwards

1 which materially affected the financial statements that these
2 steakhouses and these joint ventures had given to the lending
3 institutions that were financing them to the tune of about
4 \$250,000 per restaurant to buy restaurant equipment, and not to
5 mention potential liabilities to the limited partners, which,
6 you know, haven't even been addressed yet.

7 So, as a result, they received this accountant's report on
8 January 13th Upon receipt of it immediately distributed it to
9 all the directors, including Mr. Edwards. Called a shareholders
10 meeting with a request that there be a shareholders action
11 brought against Mr Edwards And that a suit, a minority
12 shareholder impression suit and a derivative shareholders action
13 be brought to try remedy these activities, have Mr Edwards pay
14 back to the company what he unlawfully put in there And
15 frankly, Your Honor, to deal with the potential of other
16 liabilities to banks, lending institutions and limited partners
17 that flowed from fraudulent financial statements.

18 Mr Edwards, who had never done anything to cause any
19 action, any change in the bylaws, anything to happen with this
20 corporation prior to this meeting and this demand, upon the
21 filing of the lawsuit immediately filed a request, as you can
22 see here, that there be a shareholders meeting.

23 The intent of the shareholder meeting, and there are some
24 things that he's listed as the intent of that meeting which are
25 fairly innocuous, but the worst, the worst part of the proposed

1 amendments are to basically restrict the management of ERVI, Mr
2 Jones' corporation, of these restaurants and to basically turn
3 over the control of the funds back to Mr. Edwards, who was the
4 subject of the accounting statements which found him guilty of
5 fraud

6 THE COURT Okay Now, why don't you point out to me
7 which of these amendments does what you're saying

8 MR HOFF Yes, Your Honor

9 THE COURT It's hard to follow them because many of
10 them refer to articles

11 MR HOFF First of all, Your Honor, it says that under
12 article, proposed article 8 which is on page 2 of the proposed
13 amendments, it says all of the corporation's revenues will be
14 applied and distributed in accordance with provisions of this
15 article 13 -- I think I misstated. It's article 13 -- unless
16 otherwise agreed in writing by shareholders holding not less
17 than two-thirds of the corporation's shares That would be Mr
18 Edwards, he owns 70 percent

19 It says under section 2 that all of the corporation's costs
20 of doing business, however characterized, will be paid from the
21 management fees The corporation's cost of doing business will
22 be deemed to include, but will not be limited to rent, salaries,
23 legal expenses, accounting expenses, advertising, equipment and
24 supplies

25 Evergreen is not managing these restaurants pursuant to the

1 agreement with Mr Edwards and pursuant to Outback's demand
2 The management is being provided by ERVI So, what they are
3 saying is that now Evergreen gets these revenues

4 And section 3 says revenues other than management fees The
5 affairs of the corporation will be conducted so that all
6 revenues other than management fees will be distributed to the
7 corporation's shareholders That means that it will be a direct
8 funnel to funnel out 70 percent of all the money that comes in
9 to Mr Edwards since he is the 70 percent shareholder of the
10 corporation

11 This will result directly in Outback lifting these
12 franchises Its irreparable harm is that these whole franchises
13 are now in existence because an arrangement was negotiated that
14 Outback demanded And that is that Mr Edwards no longer have
15 any management control

16 The other is article 14, which requires -- and you see what
17 is happening here is they're taking normal activities that would
18 be done by management and making them to require shareholder
19 control So that Mr Jones -- pardon me, Mr Edwards as the
20 majority shareholder would have direct control over the
21 operations

22 They couldn't sell or exchange or dispose of any capital
23 assets except as approved by Mr. Edwards They couldn't loan
24 funds or other assets to the corporation except as approved by
25 Mr Edwards They couldn't terminate, amend or transfer any

1 interest in a franchise agreement except as authorized by Mr.
2 Edwards They couldn't do anything with a limited partnership
3 agreement or a joint venture agreement or anything related to
4 the limited partners except as approved by Mr Edwards.

5 Now, these are very drastic sorts of actions. You're taking
6 the management of a corporation and you're saying we're giving
7 the management of the corporation to the majority shareholder
8 This is exactly one of the bases of the majority shareholder
9 impression suit that we're bringing And this is a continuation
10 of the activities which have already been found to amount to
11 mismanagement when Mr. Edwards was running this.

12 And, again, Your Honor, we're not asking at this point for
13 some permanent injunction enjoining him to do this All we're
14 asking is that this is such a drastic step that can cause such
15 irreparable injuries, that we want this -- we want to have this
16 meeting postponed until a full hearing can be held on the
17 preliminary injunction

18 THE COURT Thank you Mr Hall

19 MR HALL May it please the Court As you might
20 imagine, we have a greatly different view of things Our view
21 simply is this is a business dispute It requires a business
22 solution

23 There's two ways of approaching this. We can either have
24 these parties resolve their differences by using their corporate
25 rights that they have pursuant to the rules of corporate

1 governance to resolve their differences or we can have court
2 intervention

3 If we are going to have court intervention, in my view the
4 opposing sides should be seeing if they can meet the standard
5 for the appointment of a receiver or something of that nature
6 Somebody who can get in here and protect both sides

7 It is not appropriate to ask this Court or any court to
8 selectively interfere with corporate rights And what they are
9 asking this Court to do is to strip Mr Edwards of the only
10 protections he has to protect himself against their actions and
11 let them continue doing what they want

12 Now, the facts in this case are complex and they're a mess
13 and I'm not going to go over them But I would like to just
14 make sure the Court understands a couple of things which I think
15 can be confusing

16 Outback said that they no longer wanted Mr. Edwards to be
17 the designated operating partner for Evergreen He had some
18 alcohol problems He sought treatment But they didn't want
19 him to be the operating partner

20 It was Evergreen's right And I might add, at that point
21 there was no suggestion that Mr Edwards had ever done anything
22 improper, any accounting improprieties, that there was any
23 self-dealing. There was simply a problem with the economy was
24 down, sales weren't that good and Mr. Edwards had an alcohol
25 problem and they wanted a new operating partner

1 They said that Mr Jones would be an acceptable alternative
2 They said that Mr Shannon would be an acceptable alternative
3 They said that Evergreen could propose someone else Outback
4 has absolutely no right to select the operating partner. That
5 is Evergreen's decision

6 Mr Edwards cooperated and he said fine, Mr. Jones is
7 acceptable And the idea was that Mr Jones would run the
8 restaurants, the restaurant operations, 27 existing restaurants
9 There was never any intention that Mr. Edwards would lose his
10 right to have input as a director and shareholder over major
11 decisions such as disposition of assets of Evergreen

12 And what happened was Mr Jones said, you know, if we open
13 new restaurants, I really think it would be fairer if I got to
14 have those for myself, and Outback thinks that would be a good
15 idea, too Would you agree to that? And I'd like to form
16 another corporation and when we open new restaurants, I would
17 like to get those for my corporation

18 Mr Edwards said, well, you know, I guess that's not a
19 problem assuming we work everything out and it doesn't hurt
20 Evergreen. So, he formed -- Mr Jones formed his new
21 corporation, ERVI And they talked about how the two
22 corporations were going to operate side by side

23 And it didn't make any sense to have two sets of employees
24 and two sets of office space and so forth, so Mr Jones said why
25 don't we -- I will transfer the employees over to my corporation

1 and you can just contract management services from my
2 corporation Mr Edwards says, well, fine, and we'll pay you
3 the net management fees from Evergreen

4 So, that's all great up to that point And they start out
5 to document this And Short Cressman says wait a minute, we've
6 got a conflict here, let's get some independent counsel So,
7 that happened

8 Then there were never any documents drafted, which you have
9 two very distinct corporations here, ERVI and Evergreen Mr
10 Jones is a designated operating partner for Evergreen
11 Everything he does for Evergreen is done on behalf of Evergreen
12 He owes his duties to Evergreen, to these 27 restaurants

13 And he also wears another hat He is the CEO and owner of
14 ERVI. And for five of these restaurants, he's operating as the
15 designated operating partner for ERVI, the other corporation.
16 So, there is a potential for a mess here

17 And what was supposed to happen is Evergreen would have
18 greatly reduced operating expenses because they didn't have all
19 these employees anymore But they would have some expenses like
20 attorneys fees, Short Cressman They'd have some accounting
21 fees, they'd have some license fees, maybe a few hundred
22 thousand dollars a year Those were supposed to be paid. And
23 then Mr Edwards was ready to have the rest of the management
24 fees paid over to ERVI on a contract basis to use some of their
25 services to manage these things

1 Basically what happened was Mr Jones got in there and
2 decided he just didn't want to ever have to deal with Mr
3 Edwards again and just basically started combining these two
4 corporations, which was never intended by anybody

5 And what has happened is that we, Mr Edwards basically has
6 acted with restraint throughout this He has written letter
7 after letter asking for simple things like I just want access to
8 corporate information, and he can't get it He has written
9 letters saying please stop commingling the funds You don't
10 need to commingle the funds between these two corporations to do
11 what was intended. And he gets different answers. At one time,
12 we hear an answer that the commingling will be stopped At
13 other times, they don't get any answer

14 Then there is this issue of transactions between the two
15 corporations where there is conflicting interests And an
16 example of that is this cross-collateralization of a loan from
17 the bank Now, we aren't trying to interfere with any existing
18 relationship or any -- of any contract in existence That is
19 not what's going on here.

20 And Mr Edwards found out after the fact they had cross-
21 collateralized a loan so that the assets of Evergreen are being
22 pledged for the debt of ERVI And that's a concern potentially
23 Because although in the affidavit that was submitted, Mr. Jones
24 said that Evergreen has more debt than ERVI, 22 million to 17,
25 that is a little misleading because Evergreen has 27 stores, so

1 it's got debt of 81,000 per store ERVI has debt of 340,000 per
2 store

3 THE COURT Just out of curiosity, what are the assets
4 that are being cross-collateralized? Are they the franchise
5 agreements?

6 MR. HALL It's my understanding it's everything It's
7 the leases, the stores. It's the cash that is in the account.

8 THE COURT So, it's the right to payments from the
9 restaurant That is what we're talking about?

10 MR HALL My understanding is it includes that, but
11 there are also physical facilities and leases.

12 THE COURT But Evergreen doesn't own any of the
13 physical facilities, does it?

14 MR HALL No But it's a general partner in the
15 limited partnerships that do.

16 And so, the point is this. There is \$340,000 of debt per
17 store on Mr Jones' restaurants So, his budding business is a
18 lot more risky and a lot more leveraged All Mr Edwards asked
19 for was on a going forward basis when it comes time to consider
20 whether we want to have an arrangement to cross-collateralize
21 between these two corporations, that he have a say in that
22 He's not trying to undo anything in the past Mr Jones has
23 said no to that

24 And on these management fees, Mr. Jones basically said I'm
25 not going to pay any expenses of Evergreen anymore What I'm

1 going to do is I'm going to take all the management fees over to
2 ERVI, a million-600,000 dollars each year roughly, and this
3 \$200,000 of expenses that are remaining, I'm just going to
4 charge that to the investment income of Evergreen and you, Craig
5 Edwards, can pay 70 percent of that and it's tough luck And
6 that was not the deal. There is nothing that suggests that was
7 the deal And we've said please quit doing that and he said no

8 So, finally, finally we wrote letters that were increasingly
9 tough saying, you know, please respond to this or we're going to
10 have to take legal action And they filed this lawsuit, in my
11 view, as a preemptive matter to get an advantage over us and
12 maybe they succeeded, I don't know

13 But what I do know is that you could litigate this whole
14 lawsuit to conclusion and it wouldn't change the fact that these
15 parties need to get along That these parties need to reach a
16 business deal as to how they're going to proceed.

17 And we have suggested again and again third-party mediation,
18 anything that will work All we want defensively, protectively
19 and I think it's more than reasonable is we want equal access to
20 information We can't even respond to this ridiculous
21 accountants' report because we can't get access to the books and
22 records of the company

23 We want agreement that if any new transaction is entered
24 into between Evergreen and ERVI, these two companies, where
25 there is a conflicting interest by Jones or Leich, that we are

1 involved in that decision They can't just ignore us and deal
2 with their own company on new transactions, which seems to me
3 very modest

4 And if there is going to be any impairment of the assets of
5 Evergreen, I'm not talking about the day-to-day operations of
6 the restaurants or who manages the restaurants and how they sell
7 their steaks No body is interested in that And that is what
8 Outback doesn't want Mr Edwards interfering in.

9 There have been no amendments to any of these franchise
10 agreements since the inception of the company There is no
11 reason there should be any amendments now There is no reason
12 anybody should transfer these franchises to a third party

13 What they won't provide assurances they won't do, they won't
14 even provide assurances they won't transfer these franchise
15 agreements to themselves And in fact, at one point they
16 asserted in a letter that they had assigned all these management
17 fees formally to their own company So we wrote and asked where
18 is the assignment agreement, and they said, well, there's not
19 really one So, that's what we want in terms of standstill

20 On the money, I'll tell you what is happening on the money
21 because it always comes back to the practicalities This
22 company, Evergreen -- forget ERVI for a minute -- but Evergreen
23 has roughly \$3,000,000 in investment income every year It is
24 Mr Edwards' essentially his sole source of income, his share of
25 those distributions It has a \$1 6 million it gets in

1 management fees. So, we're talking about \$4 6 million that
2 these people have control over

3 Mr Edwards can't incur one dime of expense on behalf of
4 Evergreen because he's not an officer, he's not involved in
5 running the corporation. And if we pass these bylaws, he still
6 couldn't go out and incur one dime of expense We're talking
7 about expenses being incurred by Cliff Jones on behalf of
8 Evergreen and then he's refusing to pay them out of the
9 management fee So, there is --

10 THE COURT What do you mean he's refusing to pay them?
11 Who is paying them?

12 MR HALL He takes the investment income of Evergreen
13 and pays that and then takes all the management fees for himself
14

15 THE COURT: For himself or running the company?

16 MR HALL Well, you can label this any way you want
17 When Mr Edwards was the CEO and designated operating partner of
18 Evergreen, the way it worked was the roughly million-six would
19 come in He'd pay the employees, the rent, the lawyers, the
20 accountants, whatever other expenses there were He would take
21 a salary. If there was anything left over, they would
22 distribute it to all the shareholders All right? And
23 sometimes there was something left over

24 The way it works now -- it's not supposed to be working this
25 way -- the money never even hits the Evergreen bank account

1 Mr. Jones -- although you can pick up one of these franchise
2 agreements and they put it into evidence and it says right there
3 on page 14 Evergreen gets the money But it never hits the bank
4 anymore They just divert it over to ERVI Take it all for
5 themselves Don't pay the accountants or lawyers back over at
6 Evergreen

7 And worse than that, they take the \$3,000,000 of investment
8 income, kind of slosh it around over at ERVI for a while and
9 fund their restaurants and use it however they want And
10 eventually pay some back and make some belated distributions to
11 Mr Edwards

12 THE COURT Is Mr. Edwards getting a salary?

13 MR HALL No He gets a salary from nowhere He is
14 dependent for shareholder distributions to live, to pay his
15 bills, to pay me

16 THE COURT What is he doing for the corporation right
17 now?

18 MR HALL Nothing He's a shareholder

19 THE COURT Then why should he get a salary?

20 MR HALL He shouldn't He should get shareholder
21 distributions

22 THE COURT. So, what is his concern, that he's not
23 getting a sufficient distribution because too much is taken out
24 of the investment income account?

25 MR HALL Yes His concern is that they're reducing

1 the distributions by diverting part of the funds where they
2 shouldn't, and they are using the monies of Evergreen to --
3 putting them at risk running ERVI and won't even give him a say

4 Like when the bank comes up in renewal in a couple of
5 months, they will just ignore him and do what they want with
6 Evergreen's assets He should have a say in that That was the
7 idea He would have oversight, but he wouldn't be involved in
8 day-to-day operations, he wouldn't draw a salary

9 THE COURT Let me ask you something Were you
10 finished, just about? Did you have more?

11 MR HALL In what I want to say to the Court? I did
12 have something else I wanted to say, but I'm happy to respond

13 THE COURT Go ahead. I want to hear the rest

14 MR HALL I guess, you know, I guess here's my point
15 and I don't want to belabor the facts But certainly they have
16 looked at everything in this case I mean, they say four out of
17 27 restaurants they have looked at They've looked at four out
18 of 27 restaurants when they want to argue about these accounting
19 treatments But in terms of anything that could be self-
20 dealing, they have looked at the whole nine yards

21 They've looked at eight years They've looked at every
22 expense Mr Edwards ever turned in and we deny there is one
23 single dollar of self-dealing

24 But if everything they said was true, Your Honor, we're
25 talking about \$70,000 or so I mean, it's just insane If they

1 won this case, they wouldn't be entitled to the relief they're
2 seeking

3 So, I guess where I end up is where I started, which is if
4 this Court is going to strip Mr Edwards of his ability to try
5 and protect himself in this mess and try to negotiate a
6 resolution, we're in trouble We need to negotiate with our
7 full rights so they can't basically take this corporation for a
8 song. And that's what I want

9 So, either I'm happy if you leave the parties to their own
10 devices or I'm happy if you want to step in and say, hey, just
11 hold everything You guys don't take another dollar out of
12 here You guys, you know, don't do any new transactions until
13 we sort this out I would be happy with that

14 But I would not be happy being left hanging in the middle
15 where we're stripped of our ability to protect ourself I guess
16 that's what I'm trying to say

17 And finally most importantly, the way it stands right now
18 they have money to fund their accounts, to squeeze Mr Edwards
19 I mean, they're using the corporate funds, these management fees
20 to hire like this accounting firm that went out and concocted
21 this report That should have been hired on their own nickel
22 because it's a shareholders dispute and that was not authorized
23 We have no money to hire accountants because they're dragging
24 their feet on distributions

25 So, we have to make sure the money flows evenhandedly so

1 that they don't choke us to death if we're going to have a
2 dispute. I'm happy to do it either through bylaws or through
3 the Court, but it should be evenhanded is all I'm saying

4 THE COURT Thank you, Mr Hall Mr Hoff, you want to
5 respond?

6 MR HOFF Yes, Your Honor Obviously there's a lot of
7 disputed facts here and it's not going to serve any useful
8 purpose to go back and forth on the disputes

9 But I do want to just read you a paragraph from Mr Jones'
10 declaration which was filed in response to a submission by Mr
11 Hall, which is paragraph 13 on page 5 of his declaration, where
12 he says, "Let me reemphasize how the management fees are being
13 used Management fees pay for critical management and
14 accounting support for the restaurants owned by the various
15 limited partners ERVI also uses fees to pay for technical
16 support and training related to food items and service and for
17 the salaries of managers in training ERVI also has used the
18 fees in the past two years to rebuild the marketing effort not
19 undertaken by Edwards For example, ERVI purchased a billboard
20 at Safeco Field in Seattle to promote Outback Steakhouse
21 restaurants and to secure a lucrative co-marketing agreement
22 with the Seattle Mariners "

23 THE COURT I can read the rest of it, Mr Hoff I've
24 got it right here

25 MR HOFF The point is, Your Honor, that the issue

1 here is whether the money that comes in should be used to
2 reinvest in the restaurants and the business and go to the
3 limited partners or whether it should be distributed to Mr
4 Edwards

5 And one of the big issues that Outback had, and there is no
6 dispute and you've heard no dispute here that Outback said
7 you've got to get Mr Edwards out of control And, of course,
8 there is a dispute in the affidavit because Mr Jones said it
9 was Outback that mandated he be the person

10 The reason that was done is because money was being taken
11 out of these franchises The restaurants weren't operating
12 properly We're just asking to preserve the status quo pending
13 the hearing That's all, Your Honor

14 THE COURT Okay Well, the Court has no problem in
15 dealing with the issue before it today I think -- I guess what
16 I was going to ask you, Mr. Hall, was -- but I think I already
17 arrived at a conclusion about it I fail to see in balancing
18 harm here, I fail to see any dire need on the part of Mr.
19 Edwards to pass these amendments immediately. It just doesn't
20 wash with me And that would seriously change the status quo

21 He would basically by these amendments, I'm convinced, be
22 put in a position where he could manage just about every
23 important decision that would come up.

24 So, I am going to grant the temporary restraining order
25 But that's really not the end of it and I think Mr Hall has

1 made a good point

2 The real question is where do we go from there And I
3 think that this is not -- when I say I'm granting the temporary
4 restraining order, I think the way in which the Court sees this,
5 yes, he is not going to be able to hold a shareholder meeting
6 and pass his own amendments that make everything require 70
7 percent shareholder to run the corporation

8 On the other hand, as far as plaintiffs are concerned, there
9 are definitely certain transactions in which Mr. Edwards should
10 be given information I don't see anything wrong with the
11 amendment requiring him to get corporate information That is
12 not going to hurt anybody That should be done

13 MR. HOFF Nor do we, Your Honor

14 THE COURT Shouldn't be opposed

15 MR. HOFF I agree

16 THE COURT So, why don't you drop that part out of
17 your TRO

18 MR. HOFF. We will be happy to agree or we'll simply
19 agree that we will give them any of the information they want,
20 as we have previously That is a disputed item, too

21 THE COURT I don't want to hear a dispute about it I
22 want him to get any corporate information he needs

23 MR. HOFF We agree, Your Honor

24 THE COURT I could sit down and do this with you on an
25 agonizing line-by-line basis But I want to know exactly what

1 are the areas that he is asking -- I mean, the way I interpret
2 what Mr Hall has said is that he is asking and using these
3 amendments as a way of gaining information and input that has
4 been denied him And that were he able to have some input into
5 this, were he able to be informed of some of the big events that
6 are coming up, like cross-collateralization when it happens or
7 new loans that are coming up, he wouldn't need amendments to
8 ensure that he be given that information or that he at least be
9 notified when this big events are coming up

10 I can sit here and say, okay, these are the things Mr
11 Hall has mentioned a few. I could sit here and say, okay, so he
12 should be told if there is ever going to be cross-
13 collateralization He should be told if there are going to be
14 renewals of loans or financing with the bank Well, information
15 on how the management fees are being used, and how the
16 investment income is being distributed and what it's being used
17 for You know, if these were given to him, he wouldn't need the
18 amendments that he's asking for

19 Now, it's very clear to the Court that -- I can say this as
20 a mastery of understatement -- that there is a lack of trust on
21 the part of the parties That sounds like understatement to me
22 You know, the parties have said some -- are really saying some
23 pretty ugly things about each other through their lawyers as
24 they stand up here today

25 Once that is done, it would do no good for me to say go out

1 and work this out I doubt that is going to happen in the
2 context of a suit in which each side is basically saying the
3 other side is dealing improperly with great sums of money
4 We're not talking small sums of money here

5 One of the reasons I'm ruling the way I'm ruling, just so
6 that the parties know is I do think that not maintaining the
7 status quo could result in more harm than good, you know Mr
8 Edwards may win -- if he won his point, may lose -- win the
9 battle but lose the war If Outback kicks everybody off
10 managing these restaurants, what good is it going to do?

11 So, I think the status quo is to not not deal with these
12 amendments right now, but I am much more concerned with how to
13 proceed with this in the future Maybe the way to deal with
14 this is not to deal with it in open court To get some advice
15 from counsel in chambers on some procedural way that we can get
16 this on a track where the parties might be able to, given the
17 lack of trust, might be able to work with each other, either
18 through a third party or whatever So, maybe that is the way to
19 go

20 Because I've given you my ruling on the TRO, but that is not
21 only going to take care of the next ten days. Maybe renewal in
22 the next ten days. But the amendment part of it is just a side
23 show What's going on here are some real underlying problems
24 And there must be ways that we can implement to help the parties
25 work this out

1 As you've all pointed out, nothing ever got done in writing
2 That might resolve some of these So, why don't you come into
3 chambers and let's try to be a little creative here

4 MR HOFF Before we do so, Your Honor, could you set
5 the amount of the TRO bond?

6 THE COURT What's the harm? Mr Hall, what do you
7 want? What is the harm to him? What is the danger of his
8 losing anything by not getting these amendments passed in the
9 next couple weeks? I have a hard time seeing what it is, so

10 MR HALL Well, Your Honor, if counsel is basically
11 representing that they're not going to try to transfer any of
12 the assets, you know, try to do any new deal, get rid of these
13 assets, major transactions until we can talk this out with the
14 Court, I think that you're right, for the next ten days it's not
15 a big deal But I would be very distressed, for example, if we
16 waited ten days and came back and found out they had done a
17 transaction.

18 THE COURT This is exactly what I want to deal with in
19 chambers I think it has to be a two-way street But I heard
20 Mr Hoff saying that, that status quo meant exactly that That
21 they're not going to use the couple of weeks in which I have
22 basically enjoined him from holding this meeting to go out and
23 transfer all the assets that he's concerned about and that is
24 why he wanted the amendments That is not what the Court
25 envisions.

1 And I want to find -- actually what I'm hoping we can talk
2 about is a way to get an agreement between the parties that can
3 make you live with this until we can work out the major problems
4 underlying the whole suit. I mean, there is a way to just put
5 everybody at ease. Since you don't trust each other, they're
6 not going to do it on a handshake. But we could do it by an
7 agreement between the attorneys who I think, knowing both of
8 you, do trust each other and will pursue your clients' interest.
9 And frankly your clients' interest in this case is to work
10 something out.

11 MR. HALL: In the spirit of trying to generate some
12 trust, Your Honor, if that is the deal and the understanding
13 staying, I'm not going to make an issue over a bond for the next
14 ten days.

15 THE COURT: I'll see you in chambers.

16 (At 4:03, court was in recess.)

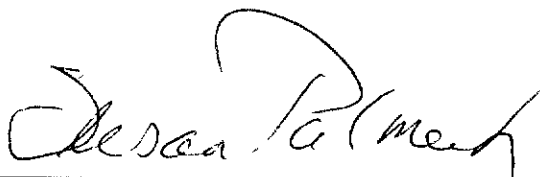
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CERTIFICATE

I, Susan Palmerton, court reporter for the United States District Court in the Western District of Washington at Seattle, was present in court during the foregoing matter and reported said proceedings stenographically

I further certify that thereafter, I, Susan Palmerton, have caused said stenographic notes to be transcribed via computer, and that the foregoing pages are a true and accurate transcription to the best of my ability

Dated this 3rd day of March, 2003.



Susan Palmerton